

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly determined that appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

On October 25, 2013 appellant, then a 62-year-old recreation assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2013 his right knee popped and he sustained a knee injury when he was storing cleaning supplies while in the performance of duty. He stopped work on that date. OWCP accepted the claim for tear of the medial meniscus of the right knee, internal derangement of the right knee, and a Baker's cyst on the right knee. It later expanded the acceptance of appellant's claim to include permanent aggravation of right knee osteoarthritis.

On February 5, 2014 appellant underwent a right knee medial meniscal repair, chondroplasty of the medial femoral condyle for grade 3 changes and loose body removal. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning February 5, 2014. Appellant returned to full-time modified duty on March 19, 2014.

Appellant stopped work on January 6, 2015 as the employing establishment had no light-duty work available. It removed him from his position due to his medical inability to perform the duties of his assigned position. On March 5, 2015 OWCP paid appellant on the periodic rolls effective February 25, 2015.

By decision dated December 1, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits effective December 1, 2016. On January 24, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated February 10, 2017, the hearing representative denied appellant's request as untimely. He then requested reconsideration. By decision dated February 22, 2017, OWCP denied modification of its prior decision.

On November 9, 2017 OWCP expanded the acceptance of appellant's claim to include permanent aggravation of osteoarthritis of the right knee. It authorized wage-loss compensation on the supplemental rolls effective December 1, 2016.

On January 26, 2018 OWCP referred appellant for vocational rehabilitation counseling.

By decision dated April 8, 2021, OWCP reduced appellant's wage-loss compensation, effective that date, pursuant to 5 U.S.C. § 8113(b) and 20 C.F.R., § 10.519(a), for his failure to cooperate with and complete vocational rehabilitation without good cause. On May 5, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 25, 2021 letter, the hearing representative notified appellant that it had scheduled a telephonic hearing for July 20, 2021 at 2:15 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. The hearing

representative mailed the notice to appellant's last known address of record. He did not appear for the hearing and no request for postponement was made.

By decision dated August 9, 2021, OWCP determined that appellant had abandoned his request for an oral hearing. It further found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁶

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

Following OWCP's April 8, 2021 decision, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 25, 2021 letter, he was notified that a telephonic hearing was scheduled for July 20, 2021 at 2:15 p.m. EST. The hearing notice was properly mailed to appellant's last known address of record⁷ and provided instructions on how to participate. There is no evidence of nondelivery of the hearing notice. However, appellant failed to appear for the scheduled hearing and he did not request a

³ 20 C.F.R. § 10.616(a).

⁴ *Id.* at § 10.617(b).

⁵ *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

postponement or provide an explanation to OWCP for his failure to appear within 10 days of the scheduled hearing.⁸ The Board, thus, finds that OWCP properly determined that he abandoned his request for an oral hearing.⁹

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁸ See *A.J.*, *supra* note 6.

⁹ See *E.S.*, *supra* note 7.